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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,867	04/13/2004	Philip Samuel	14640.1USW1	2669
23552	7590	06/26/2006	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			OH, TAYLOR V	
			ART UNIT	PAPER NUMBER
			1625	

DATE MAILED: 06/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/822,867	SAMUEL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Taylor Victor Oh	1625	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/16/04</u>   | 6) <input type="checkbox"/> Other: _____                                    |

The Status of Claims:

Claims 1-8 are pending.

Claims 1-8 have been rejected.

DETAILED ACTION

1. Claims 1-8 are under consideration in this Office Action.

Priority

2. It is noted that this application is a continuation of PCT/IN03/00192 (05/19/2003).

Drawings

3. None.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated clearly by Clouatre et al (6,447,807).

Art Unit: 1625

Clouatre et al teaches a method for making the potassium and sodium salts of hydroxycitric acid and mixtures thereof workable, non-hygroscopic and non-reactive in acidic media by encasement as shown in example 6 (see col. 7 ,lines 55-63) below:

Ingredient	Weight	Percent	1 Kg Batch
1. Aqueous Potassium Hydroxycitrate	500 gm	62.5%	0.63
2. Calcium Carbonate	50 gm	6.25%	0.06
3. Potassium Carbonate	50 gm	6.25%	0.06
4. Anhydrous Lactose	150 gm	18.75%	0.19
5. Cellulose Acetate Phthalate Acetate	50 gm	6.25%	0.06
Total	800 gm	100.00%	100.00

In addition, the inclusion of the available mineral salts of HCA in a prepared beverage of acidic pH will develop the HCA lactone over time (see col. 2 ,lines 29-31). This is identical with the claims.

### ***Claim Rejections - 35 USC § 103***

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 1625

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clouatre et al (6,447,807) in view of Moffett et al (US 5,656,314).

Clouatre et al teaches a method for making the potassium and sodium salts of hydroxycitric acid and mixtures thereof workable, non-hygroscopic and non-reactive in acidic media by encasement (see an abstract) in example 6 (see col. 7 ,lines 55-63) below:

Ingredient	Weight	Percent	1 Kg Batch
1. Aqueous Potassium Hydroxycitrate	500 gm	62.5%	0.63
2. Calcium Carbonate	50 gm	6.25%	0.06
3. Potassium Carbonate	50 gm	6.25%	0.06
4. Anhydrous Lactose	150 gm	18.75%	0.19
5. Cellulose Acetate Phthalate Acetate	50 gm	6.25%	0.06
Total	800 gm	100.00%	100.00

Art Unit: 1625

In addition, the inclusion of the available mineral salts of HCA in a prepared beverage of acidic pH will develop the HCA lactone over time (see col. 2, lines 29-31).

Furthermore, the Clouatre et al elaborates that the one skilled in the art can make other non-salts of hydroxycitric acid, e.g., calcium and magnesium and various mixtures of the known salts, amenable to stable inclusion in liquid acidic formulation (see col. 9, lines 1-5). Also, a spray dry process can be applied to the mixed solution at a temperature of 265 °C (see col. 5, lines 46-47).

The instant invention, however, differs from the prior art in that extracting hydroxycitric acid from Garcinia rind, treating the extraction solution with a calcium base, and filtering out the calcium hydroxycitrate, calcium sulfite to obtain the hydroxycitric acid.

Moffett et al discloses a method of removing salts from the Garcinia water extract in the followings (see col. 5, lines 30-45):

**200 ml of Garcinia water extract, containing 61.4 g of organic acids, was precipitated with 33.4 g of CaOH to get calcium hydroxycitrate. The precipitate was then diluted with about 300 ml of cold water and filtered under vacuum. The wet precipitate obtained, on drying at 60° C. for 16 hours, gave 83.5 g of dry calcium hydroxycitrate. The calcium hydroxycitrate was converted to hydroxycitric acid and calcium sulphate by adding 369 ml of 2.5N sulphuric acid. Calcium sulphate precipitate was removed by centrifugation at 8000 rpm for 15 minutes.**

**53 g of hydroxycitric acid was present in 355 ml of supernatant and the recovery was 87.6%.**

Furthermore, it is feasible to filter out the calcium sulphate precipitate (see col. 2, lines 56-57) instead of centrifugation.

Also, Moffett et al discloses the isolation of hydroxycitric acid from the Garcinia water extract to be used in the preparation of beverages (see col. 6 ,lines 60-64).

Concerning the use of calcium sulfite instead of calcium sulphate, there is little difference for using it as the base. This is because their role is to neutralize the acidic pH in the desired solution product. Therefore, there is no patentable weight over the prior art's reagent.

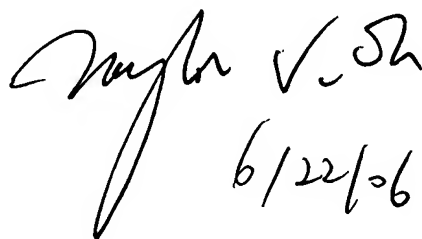
Clouatre et al is involved with the method for making the potassium and sodium salts of hydroxycitric acid and mixtures thereof ; similarly, Moffett et al discloses the isolation of hydroxycitric acid from the Garcinia water extract. Both prior art do disclose the hydroxycitric acid concentrate to be used in the preparation of beverages. Furthermore, the Clouatre et al does offer guidance that the one skilled in the art can make other non-salts of hydroxycitric acid, e.g., calcium and magnesium and various mixtures of the known salts in liquid acidic formulation (see col. 9 ,lines 1-5). Therefore, it would have been obvious to the skilled artisan in the art to be motivated to incorporate Moffett's et al method of isolating hydroxycitric acid from the Garcinia water extract into the Clouatre et al process in order to produce various mixtures of the known salts of the hydroxycitric acid in liquid acidic formulation from the raw materials.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Taylor Victor Oh whose telephone number is 571-272-0689. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas McKenzie can be reached on 571-272-0670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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6/22/06